

REMARKS

Claims 1, 4, 6 and 8-18 are pending. By this Amendment, claims 1, 8 and 15-18 are amended.

The Office Action rejects claims 1, 4, 6 and 8-18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,271,626 to Llenas ("Llenas"). The Office Action rejects claims 1, 4, 6 and 8-18 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The rejections are respectfully traversed. Reconsideration based on the following remarks is respectfully requested.

The rejection of claims 1, 4, 6 and 8-18 under 102(b) as being anticipated by Llenas

On Page 10 of the Office Action, the Examiner recited:

Llenas teaches . . . that clues are provided at least partially during a commercial in the fade-to-black periods at the ends of many commercials (see col 4, lines 55-60; col 7, lines 50-65)

Applicant respectfully disagrees. However, in an effort to expedite allowance, without acquiescence to the above, applicant has amended each of the independent claims to, for example, recite:

broadcasting, using the radio broadcast media, at least one clue at least partially during the audio content of said at least one set of commercials as part of the audio content related to the commercial's audio content

Llenas defines both the fade-to-black and black period as lacking audio content and thus can not disclose a clue during audio content of a commercial that is a part of the audio content related to the commercial's audio content. For example, Llenas recites:

One area of television programming that is relatively undeveloped involves the use of **"black spaces" that occur between commercials. Often, between the commercials and substantive programs** and also between each of the commercials . . . The black spaces generally represent the switching times between commercials.

(Col. 3, Lines 4-6) (Emphasis Added)

These black spaces may also represent a fade time which has already been inserted into the commercial tape before being sent to a local television station to be broadcast.

(Col. 3, lines 20-25) (Emphasis Added)

An advertiser may want the commercial to fade to black for a brief time, e.g., one second, before the next commercial begins. **By quickly fading temporarily to black, an abrupt transition between the commercials can be avoided so that the attention of viewers is minimally jarred when the next commercial is presented.**

(Col. 3., lines 11-14) (Emphasis Added)

As indicated above, Llenas' black spaces and fade-to-black do not include audio content. Further, nowhere does Llenas teach or suggest that the black space is part of the audio content of the commercial related to the commercial's audio content. This is to be expected as the fade-to-black and black space are not intended to provide audio content, but rather they are for avoiding jarring between commercials. Llenas' black spaces and fade-to-black represent a fade time and are for avoiding jarring and thus they would not include audio content as this would, for example, increase jarring. Reconsideration is respectfully requested.

The rejection of claims 1, 4, 6 and 8-18 under 101:

The Office Action alleges the claims are not tied to a machine nor transforms a particular article. Specifically, the examiner alleges that "broadcast media" is not an apparatus as it is defined, in the applicant's specification, as the Internet. As amended, each of the independent

EFS

Confirmation No.: 1032

Amendment dated January 26, 2010 in Response to
(Final) Office Action dated November 17, 2009

Dkt. No. 34294/3

claims recites that the broadcast media is radio broadcast media. Accordingly, applicant's radio broadcast media is tied to a machine. Reconsideration is respectfully requested.

For at least these reasons, it is respectfully submitted that claims 1, 8 and 15-18 are allowable. The dependent claims are also allowable for the reasons discussed as well as for the additional features they recite. Withdrawal of the rejections of the claims and allowance of the application is respectfully requested.

If any fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Applicants
90 Park Avenue
New York, NY 10016
(212) 336-8000

Dated: New York, New York
January 26, 2010

By: /David R. Widomski/
David R. Widomski
Registration No.: 61,555